

**Updated Informative Digest for the State Board of Equalization's  
Adoption of Proposed Amendments to California Code of Regulations,  
Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*, on March 25, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1685.5 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on March 25, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1685.5 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

**Summary of Existing Laws and Regulations**

Under RTC sections 6202 and 6453, consumers are primarily liable for reporting and paying use tax imposed on the storage, use, or other consumption of tangible personal property in this state. However, under RTC sections 6203, 6226, and 6453, specified retailers are required to register with the Board, collect use tax from their California customers, and report and pay the use tax to the state. Therefore, under Regulation 1685, *Payment of Tax by Purchasers*, consumers are required to report and pay their own use taxes to the state when they purchase tangible personal property for storage, use, or other consumption in this state from unregistered retailers that do not collect California use tax.

Prior to 2010, consumers could only report and pay their use taxes to the Board. However, RTC section 6452.1 was enacted in 2010 to make it more convenient for consumers to comply with their use tax obligations by permitting consumers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB). RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721, defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.)

to the taxpayer's purchases of tangible personal property subject to use tax.

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their "estimated use tax liabilities," based upon their AGIs for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, on their income tax returns, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, requires the Board to "annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" for inclusion in the instructions to the FTB's returns and use by eligible taxpayers. Furthermore, SB 86 expanded the definition of "qualified use tax" by deleting the reference to "section 35" of article XIII of the California Constitution from RTC section 6452.1, subdivision (d)(2).

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the specific use tax table that taxpayers could use to estimate their calendar-year 2011 use taxes based upon their adjusted gross incomes (AGIs), prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board would be required to make available to the FTB for calendar-year 2012 and subsequent years.

As relevant here, Regulation 1685.5, subdivision (b)(7), defines the "average state, local, and district sales and use tax rate" for purposes of determining the rate of sales and use tax to be used to calculate the estimated amount of use tax due according to a person's AGI. And, subdivision (b)(7)(A) of Regulation 1685.5 specifically includes the rate of the taxes imposed by "section 35 of article XIII of the California Constitution" in the average state, local, and district sales and use tax rate because the only statewide sales and use taxes imposed under the California Constitution at the time Regulation 1685.5 was adopted were the taxes imposed by section 35 of article XIII.

#### Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1685.5

California voters approved Proposition 30 in the General Election of 2012, and Proposition 30 added section 36 to article XIII of the California Constitution to impose temporary sales and use taxes, and temporarily increase the statewide sales and use tax rate by one quarter of one percent on and after January 1, 2013, and before January 1, 2017. Therefore, Board staff determined that there was an issue because the definition of the average state, local, and district sales and use tax rate in Regulation 1685.5, subdivision (b)(7), does not include the rate of the temporary taxes, which must be included in the Board's calculations of the estimated amount of use tax due according to a person's AGI for 2013 through 2016. And, Board staff concluded that the definition of the average state, local, and district tax rate in Regulation 1685.5, subdivision (b)(7), needs to be amended to include the rate of the temporary taxes in order to address the issue.

As a result, Board staff prepared Formal Issue Paper 14-008, which recommended that the Board make Regulation 1685.5's definition of the average state, local, and district sales and use tax rate consistent with the temporary taxes imposed under the California Constitution and the current statutory definition of "qualified use tax" by deleting the specific reference to "section 35 of" from subdivision (b)(7)(A)'s current reference to the "sales and use taxes imposed under section 35 of article XIII of the California Constitution." This was because staff determined that deleting the reference to "section 35 of" expands the provisions of subdivision (b)(7)(A) so that they incorporate the rates of all of the sales and use taxes imposed under article XIII of the California Constitution, which are currently the sales and use taxes imposed by section 35 and the temporary taxes imposed by section 36 of article XIII of the California Constitution. This was also because staff determined that expanding the provisions of subdivision (b)(7)(A) eliminates any future requirements to amend the regulation's definition of the average state, local, and district sales and use tax rate each time a sales and use tax is added to or deleted from article XIII of the California Constitution. The formal issue paper did not recommend that the Board alter the regulation's definition of the average state, local, and district sales and use tax rate in any other way, and did not recommend that the Board make any other changes to the manner in which the Board is required to calculate the estimated amount of use tax due according to a person's AGI.

Board staff submitted Formal Issue Paper 14-008 to the Board for consideration during its November 19, 2014, Business Taxes Committee (BTC) meeting. And, during the Board's November 19, 2014, BTC meeting, the Board Members unanimously voted to propose the staff's recommend amendments to Regulation 1685.5 because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue referred to

above by including the rate of the temporary taxes in the regulation's definition of the average state, local, and district tax rate.

The Board anticipates that the proposed amendments to Regulation 1685.5 will improve transparency by clarifying that the Board's calculations of the estimated amount of use tax due according to a person's AGI include the rates of all the sales and use taxes imposed under article XIII of the California Constitution. The Board also anticipates that the proposed amendments will benefit the Board by eliminating any future requirements to amend the regulation each time a sales and use tax is added to or deleted from article XIII of the California Constitution.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that prescribed the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI under RTC section 6452.1. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1685.5 or the proposed amendments to Regulation 1685.5.